

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY McIVER AND HOLLYNN DELIL,	)	
	)	
Plaintiffs,	)	CIV. S-04-1616 GEB DAD
	)	
v.	)	<u>ORDER DISMISSING ACTION</u>
	)	
NATIONAL SEATING AND MOBILITY;	)	
MARTIN D. AND JANET M. SOUZA	)	
FAMILY REVOCABLE TRUST; and	)	
DOES 1-25, Inclusive,	)	
	)	
Defendants.	)	
_____	)	

On April 30, 2005, the parties filed a "Stipulation and Proposed Order for Dismissal" ("Proposed Order"). The Proposed Order would have the Court "incorporating by reference" the parties' "Mutual Release And Settlement Agreement" ("Settlement Agreement"), even though this Settlement Agreement has not been filed or otherwise shown to the Judge. Further, the Proposed Order erroneously assumes that the Court will exercise jurisdiction over a settlement agreement which the Court has not seen. Regarding this, the parties state that they "stipulate to the Court retaining jurisdiction to enforce the Mutual Release And Settlement Agreement." The parties also evince their

1 intention to have this action dismissed with prejudice, since  
2 Plaintiffs "move to dismiss with prejudice the lawsuit against  
3 Defendants," and "Defendants . . . agree to the dismissal with  
4 prejudice"; and the parties state as their conclusion they "so  
5 stipulate."

6 The parties' stipulation to dismiss the action with  
7 prejudice presents the issue whether the federal court would have  
8 jurisdiction to enforce the parties' Settlement Agreement after this  
9 dismissal is effectuated. The Seventh Circuit addressed this issue in  
10 Jessup v. Luther, 277 F.3d 926, 929 (7th Cir. 2002) as follows: "once  
11 a suit is dismissed with prejudice the judge loses all power to  
12 enforce the terms of the settlement that may lie behind that  
13 dismissal. The settlement is just another contract to be enforced in  
14 the usual way, that is, by a fresh suit."

15 While it is recognized that federal jurisdiction can be  
16 exercised over certain settlements, exercising jurisdiction is not  
17 automatic; settlement contracts must be analyzed for determination  
18 whether the exercise of jurisdiction over them is "essential to the  
19 conduct of federal-court business." Kokkonen v. Guardian Life Ins.  
20 Co. of Am., 511 U.S. 375, 382 (1994). This determination cannot be  
21 made when the Judge has not seen the Settlement Agreement. Of course,  
22 "the mere fact that the parties agree that the court should exercise  
23 . . . jurisdiction [over their Settlement Agreement] is not binding on  
24 the court." Arata v. Nu Skin Int'l, Inc., 96 F.3d 1265, 1269 (9th  
25 Cir. 1996). Therefore, jurisdiction will not be exercised over the  
26 parties' Settlement Agreement.

27 Because the parties stipulate that they have settled this  
28 action and it is to be dismissed with prejudice, and since nothing in

1 their Proposed Order indicates their settlement is contingent upon the  
2 Court retaining jurisdiction, this action is dismissed with prejudice  
3 under Federal Rule of Civil Procedure 41(a)(1). See Oswalt v.  
4 Scripto, Inc., 616 F.2d 191, 194 (5th Cir. 1980) (revealing that when  
5 the parties' representations of settlement are tantamount to a  
6 stipulated dismissal, a dismissal order should issue). The Clerk of  
7 the Court is directed to close this action.

8 IT IS SO ORDERED.

9 Dated: May 9, 2005

10  
11 /s/ Garland E. Burrell, Jr.  
GARLAND E. BURRELL, JR.  
United States District Judge

12 Dated: May 9, 2005

13  
14 /s/ Garland E. Burrell, Jr.  
GARLAND E. BURRELL, JR.  
United States District Judge  
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